NOT RECOMMENDED FOR FULL-TEXT PUBLICATION

No. 15-5490

UNITED STATES COURT OF APPEALS
FOR THE SIXTH CIRCUIT

FILED
Mar 30, 2017
DEBORAH S. HUNT, Clerk

WILLIAM E. KANTZ, JR.,

Plaintiff-Appellant,

v.

RUBIN LUBLIN TN, PLLC; RUBIN LUBLIN, LLC; FEDERAL HOME LOAN MORTGAGE CORPORATION,

Defendants-Appellees.

ON APPEAL FROM THE UNITED STATES DISTRICT COURT FOR THE MIDDLE DISTRICT OF TENNESSEE

O R D E R

Before: BOGGS, SUTTON, and WHITE, Circuit Judges.

William Kantz, Jr., a Tennessee resident, appeals the district court's judgment dismissing his civil action alleging violations of state and federal law relating to the foreclosure of his home. This case has been referred to a panel of the court that, upon examination, unanimously agrees that oral argument is not needed. *See* Fed. R. App. P. 34(a).

In 2007, Kantz obtained a loan in the amount of $391,800 from Bank of America, NA ("Bank of America") for the purchase of his residence. Kantz executed a deed of trust, conveying the property to PRLAP, Inc., as trustee for Bank of America. After Kantz stopped making payments on the loan in 2012, Rubin Lublin TN, PLLC ("Rubin"), acting as substitute trustee under the deed of trust, initiated foreclosure proceedings.[1] Rubin noticed a foreclosure sale for February 20, 2014. Kantz alleges that a public foreclosure sale never took place at the

[1] Kantz also included Rubin Lublin, LLC, a Georgia limited-liability company, as a defendant, but Rubin states and the record shows that only Rubin Lublin TN, PLLC participated in the foreclosure of Kantz's property.

noticed date and time, and that instead Rubin privately sold the property to Bank of America, making the foreclosure sale defective. A substitute trustee's deed indicates that Bank of America purchased the property for $398,126.15 and conveyed the property to the Federal Home Loan Mortgage Corporation ("Freddie Mac"). Kantz alleges that he would have been able to purchase the property, through an unnamed investor, for that sale price in February if Rubin had provided him the opportunity to participate in the foreclosure sale.

Kantz brought a civil action in state court, claiming that the sale violated the Fair Debt Collection Practices Act ("FDCPA"), *see* 15 U.S.C. § 1692(a), and was fraudulent because Rubin did not cry the sale as claimed in the substitute trustee's deed. The matter was removed to federal court. The district court granted Kantz thirty days to repurchase the property, after which, if he did not do so, Rubin could re-notice and conduct a new foreclosure sale. In a letter to Freddie Mac, Kantz offered that an investor was willing to purchase the property for $200,000, which Freddie Mac rejected, replying that Kantz could repurchase the property for the full indebtedness (approximately $420,000). Kantz states on appeal that his financial situation had changed since February and he could no longer afford to repurchase the property at full price. Kantz did not repurchase the property, and Rubin re-noticed the foreclosure sale to take place on August 26, 2014. Bank of America entered the sole and prevailing bid, $398,126.15, although its non-discretionary bidding instructions directed that it would immediately bid $461,359.51 in response to a third-party bid and that it would go no higher. Kantz does not allege that he would have or could have outbid Bank of America's maximum bid.

Kantz's second amended complaint claims fraud, breach of contract, violation of the Tennessee Consumer Protection Act ("TCPA"), *see* Tenn. Code Ann. § 47-18-104(39), and violation of the FDCPA. After the August sale, Kantz sought leave to file a third amended complaint that would add claims of alleged violations of the Truth in Lending Act and the Real Estate Settlement Practices Act, civil conspiracy, and fraud in the August sale. Rubin filed a motion to dismiss Kantz's claims pursuant to Federal Rules of Civil Procedure 12(b)(1) and (6). Freddie Mac sought to dismiss Kantz's complaint on the basis of Rule 12(b)(1).

The district court accepted Rubin and Freddie Mac's arguments and dismissed all of Kantz's claims for either mootness or failure to state a claim; denied Kantz's motion for leave to amend his complaint, reasoning that further amendment was futile; and denied Kantz's motions for partial summary judgment and for discovery. Kantz appeals.

Kantz raises four arguments on appeal: (1) the district court erred by dismissing his complaint; (2) the district court should have permitted him to amend his complaint; (3) the district court improperly determined that his motion for summary judgment was moot; and (4) the district court abused its discretion in denying his motion to conduct discovery.

The district court had things right: any harm Kantz might have suffered as a result of Rubin's failure to cry the February 2014 sale was cured by giving him an exclusive repurchase period and later by re-noticing the sale for August 2014. For thirty days, he had an exclusive opportunity to repurchase the home and did not take it. Kantz's pleadings stated that he would not have personally repurchased the property in either February 2014 or during the exclusive repurchase period, but rather an "investor" he had identified would do so. Kantz argues that the August sale was also defective, however, because after the property's note and deed were transferred to Freddie Mac, Rubin's appointment as substitute trustee lapsed. This argument contradicts his contention that the February 2014 sale was void: if the February 2014 sale was not legally effective, then Rubin's appointment would remain in place. Yet even if we accept that the August 2014 sale missed certain formalities, Kantz does not allege that those lapses prevented him from purchasing the home, but rather that his financial condition changed in the interim. In the end, it does not matter when the effective sale occurred, because Kantz lawfully lost his interest in the home and cannot maintain claims for fraud, breach of contract, conversion of property, or actual and punitive damages under the FDCPA. That moots all but two of his claims, damages under the TCPA and statutory damages under the FDCPA, and dismissal was proper under Rules 12(b)(1) and 12(b)(6).

Kantz argues that the district court improperly dismissed his claim that Rubin violated the TCPA. The TCPA provides a cause of action to any person who suffers a loss resulting from

another person's false representation that a foreclosure has been conducted on a property. Tenn. Code Ann. § 47-18-104(b)(39). However, this section protects new buyers who are misled by a seller into believing that a property has gone through foreclosure proceedings and that the seller therefore has good title. Kantz is not the consumer in this transaction, and does not allege that he suffered a loss as a result of Rubin's representation that it conducted a foreclosure, but rather alleges that he suffered due to Rubin's failure to cry. The Tennessee Court of Appeals has held that the TCPA is intended to protect consumers, not people whose property is foreclosed: "the [TCPA] does not apply to allegedly deceptive conduct in foreclosure proceedings." *Dauenhauer v. Bank of N.Y. Mellon*, 562 F. App'x 473, 482 (6th Cir. 2014) (per curiam) (quoting *Paczko v. Suntrust Mortgs., Inc.*, No. M2011-025288-COA-R3-CV, 2012 WL 4450896, at *2 (Tenn. Ct. App. Sept. 25, 2012)). Dismissal of the TCPA claim was proper.

What remains is his claim for statutory damages against Rubin under the FDCPA. That claim fails not for mootness, but because Kantz failed to state a claim upon which relief could be granted. Fed. R. Civ. P. 12(b)(6). The FDCPA provides a strict-liability scheme that allows plaintiffs to recover damages (up to $1,000 per statutory violation) even when they suffer no actual damages. Kantz's claim fails because he does not specify which provisions of the FDCPA Rubin allegedly violated. "To state a claim under the FDCPA, a plaintiff must show that a defendant violated one of the *substantive* provisions of the FDCPA while engaging in debt collection activity." *Clark v. Lender Processing Servs.*, 562 F. App'x 460, 465–66 (6th Cir. 2014) (emphasis added). All Kantz alleges in his second amended complaint is that Rubin's alleged foreclosure practices were "in violation [of] the F.D.C.P. Act." Am. Compl., R. 23 at 8. At that level of generality, neither Rubin nor the court had notice of what the claim actually was (or how to respond to it). That means Kantz's complaint cannot meet Rule 8's requirement of "a short and plain statement of the claim showing that the pleader is entitled to relief." Fed. R. Civ. P. 8(a)(2). Dismissal of this claim was proper.

Finally, any challenge to the district court's denial of Kantz's motions to amend, for partial summary judgment, and to conduct discovery is forfeited. Kantz presents this court with

the standards by which it would review these issues, but he fails to present any argument as to how the district court erred. The issues are therefore forfeited. *See Dillery v. City of Sandusky*, 398 F.3d 562, 569 (6th Cir. 2005), *abrogated on other grounds by Lewis v. Humbolt Acquisition Corp.*, 681 F.3d 312 (6th Cir. 2012) (en banc); *Wright v. Knox Cty. Bd. of Educ.*, 23 F. App'x 519, 520 (6th Cir. 2001).

Accordingly, the district court's judgment is **AFFIRMED**.

ENTERED BY ORDER OF THE COURT

Deborah S. Hunt, Clerk

UNITED STATES COURT OF APPEALS
FOR THE SIXTH CIRCUIT

Deborah S. Hunt
Clerk

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Re: Case No. 15-5490, *William Kantz, Jr. v. Rubin Lublin, PLLC, et al*
Originating Case No. : 3:14-cv-01113

Dear Sir or Madam,

The Court issued the enclosed (Order/Opinion) today in this case.

Sincerely yours,

s/Jill Colyer
Case Manager
Direct Dial No. 513-564-7024

cc: Mr. William E. Kantz Jr.
Mr. Edmund Scott Sauer
Mr. Keith Throckmorton

Enclosure

Mandate to issue